

REMARKS/ARGUMENTS

The Office Action states that the original filed inventors' declaration is defective. Applicants believe that the inventors' declaration is proper because the present application is not subject to the declaration requirements as indicated in the Office Action. The present application was filed December 12, 2003. The duty of disclosure language for oaths or declarations filed in nonprovisional applications is set for in U.S. Patent and Trademark Office Notice 1327 OG 112, February 12, 2008. The Notice clarifies the requirements for an inventors' declaration in a nonprovisional patent application filed on or after June 1, 2008. Because the present application was filed before the effective date of the new declaration requirements, the present application is not subject to the new requirements. Withdrawal of the objection to the inventors' declaration is respectfully requested.

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, because the polyol range of 1% to 2.6% and the temperature range of 185°C to 215°C are not specifically recited in the specification. They need not be. As noted in the Office Action the polyol range of 1% to 10% and the temperature range of 120°C to 215°C are provided in the specification. The claimed polyol ranges and temperature ranges are within these disclosed ranges. That is all that is required.

That what applicants claim as patentable to them is less than what they describe as their invention is not conclusive if their specification also reasonably describes that which they do claim. Inventions are constantly made which turn out not to be patentable, and applicants frequently discover during the course of prosecution that only a part of what they invented and originally claimed is patentable. *Application of Wertheim* 191 U.S.P.Q. 90 (CCPA. 1976). In Wertheim the disclosure was 25 to 60 % and the claim was 35 to 60%. It was held that the specification disclosed the claimed invention.

The claimed ranges are disclosed in a manner supported by the courts.

Claims 1, 3-4, 6-7, 10-16 and 19-20 are rejected under 35 U.S.C. 103(a) as unpatentable over Hansen et al U.S. 5,789,326.

The specific question is whether Hansen et al disclose the temperature range being claims in the present application.

The Office Action takes the position that Hansen et al do not teach that there is scorching above 180°C but only that there is no scorching below 180°C. What Hansen et al actually say at lines 6-10 of column 45 is "As the fibers are lofted through the second tower 390, they are still exposed to a curing temperature within a range of about 140°C to about 180°C which is sufficient to effect curing without scorching the dry fibers". Later, at lines 62-63 of column 45 Hansen et al state "The temperature of the second tower was within the

range of 140°C to 180°C". Hansen et al also note that discoloration and scorching are avoided (column 45, line 18).

One of ordinary skill in the art would take this as a warning that temperatures above 180°C would cause scorching and discoloration and are to be avoided. Scorching and discoloration are problems in the manufacture of crosslinked fiber. Scorching and discoloration are costly. The fibers go directly from curing to baling. The main use of crosslinked fibers is in absorbent products such as diapers. Scorched and discolored fibers are not desirable in these products. They are the subject of customer complaints, refunds and returns. Scorching and discoloration are to be avoided.

The position stated in the Office Action is that Hansen et al's upper curing temperature of "about 180°C overlaps the lower temperature of 185°C being claimed. The range of the term "about" depends on the facts of a specific case. In some case "about" has a broad interpretation; in other cases it has a narrow interpretation. There is no "one size fits all" template.

Hanson et al, as noted above, use "about 180°C" as the upper curing temperature at line 8 of column 45 but used "180°C" as the upper curing temperature at line 65 of column 45. They stated that there would not be scorching and discoloration below that temperature which implies that there will be scorching and discoloration above that temperature. Scorching and discoloration are costly problems and one of ordinary skill in the art would not go far above 180°C if there was a possibility of scorching and discoloration. They definitely would not go five degrees above because of the possibility of scorching and discoloration. They would err on the side of a lower temperature rather than risk a damaged product. One of ordinary skill in the art would probably consider "about 180°C" to be a warning to approach 180°C with caution. They would have viewed the second use of "180°C" to be an indication that 180°C could be used but not as an indication to go beyond that point.

Hansen et al does not disclose the temperature range of 185°C to 215°C. Hansen et al provide a warning above 180°C.

There is no *prima facie* case.

Claims 8-9 are rejected under 35 U.S.C. 103(a) as unpatentable over Hansen et al U.S. 5,789,326, in view of Smith et al U.S. 2002/0090511. Smith et al has been cited for citric, malic and tartaric acid crosslinking agents. This does not overcome the limitations of Hansen et al.

There is no *prima facie* case.

Claims 1, 6-8 and 10-15 are provisionally rejected under the judicially created doctrine of obviousness type double patenting over claims 1-9 and 11-12 of copending application 10/748,977. A terminal disclaimer is submitted herewith.

Claims 1, 3-4, 6-8, 10 and 12-16 are provisionally rejected under the judicially created doctrine of obviousness type double patenting over claims 1-9 and 11-12 of copending application 10/748,969. PAIR indicates this application is abandoned.

CONCLUSION

Reconsideration and allowance of the claims presently in the application is respectfully requested.

Respectfully submitted,
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